

**California Telehealth Network (CTN)  
Rural Health Care Pilot Program  
Quarterly Report: October 30, 2010**

**(Reference: FCC WC Docket No. 02-60)**



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## **1. Project Contact and Coordination Information**

### Project Leaders

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UC Davis Health System

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California Telehealth Network, Project Coordinator

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### Responsible Administrative Official

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Associate Vice-Chancellor for Strategic Technology & Alliances  
School of Medicine  
UC Davis Health System

Co-Project Director  
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Sacramento, CA 95817

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### Responsible Organization

Regents of the University of California  
University of California, Office of the President  
1111 Franklin St.  
Oakland, CA 94607  
<http://www.caltelehealth.org>  
<http://www.ucop.edu>

### Statewide Coordination

The California Telehealth Network (CTN) project is being managed at the highest level, through the Office of the President of the University of California (UC). Operational responsibility has been delegated to the following entity within the University:

Center for Health and Technology  
University of California Davis Health System  
2300 Stockton Blvd, Suite 3900  
Sacramento, CA 95817

CTN operational management also receives guidance and operational support from the large group of CTN Consortium Member organizations. The CTN Consortium was originally formed in order to coordinate and consolidate multiple independent Rural Health Care Pilot Program (RHCPP) proposal initiatives, with the aim of submitting a single proposal that represented the interests of the State of California. The Consortium was formed specifically at the direction of the Governor's Office. A list of CTN Consortium Member organizations is provided in Appendix A. The CTN Consortium advises and informs CTN project management through the CTN Advisory Committee, whose members represent

rural health care providers, state government organizations, as well as non-profit health care funding organizations. Statewide coordination of the CTN project is greatly facilitated by the willing investment of time, resources and expertise provided by the CTN Consortium members.

Operational coordination of the statewide project is currently the joint responsibility of the Center for Health and Technology at UC Davis, and AT&T who serves as the Prime Contractor for technical implementation and maintenance of the project. The CHT provides the coordination and communications infrastructure to manage the various processes necessary to prepare the prospective CTN Participant sites for enrollment in the project. CHT ensures that physical facilities are adequate and that all necessary participation agreements have been executed. CHT also manages all financial processes, including review and approval of vendor invoices, as well as collection of monthly participation fees from CTN Participants.

As described in more detail in the following section, CTN has selected AT&T who has the requisite resources, experience and available statewide communications infrastructure to coordinate, implement and manage the technical facets of this complex project. To date, one 466-A has been filed and a Funding Commitment Letter secured. Additional 466-A filings and another 465 filing are planned for the near future.

## **2. Identify All Health Care Facilities Included in the Network**

From the outset, the CTN initiated numerous statewide communications activities aimed at enrolling prospective CTN participants. Close to 1000 health care facilities signified their intention to participate by submitting a Letter of Agency with 863 of those sites confirmed eligible through the CTN Form 465 filing, dated July 3, 2009. A complete listing of eligible Participant Sites is available at the USAC RHCPP Web Site, under the California Telehealth Network entry.

<http://www.usac.org/rhc-pilot-program/tools/search-postings-2008.aspx#CA>

## **3. Network Narrative**

The request for proposals (RFP) for CTN network services (CTN RFP #2009-02) provided detailed specifications and requirements for performance, reliability, security and quality of services, as well as detailed requirements for managed services to be provided by the Contractor(s). Copies of the RFP may be obtained online at the following Web link:

<http://www.ucdmc.ucdavis.edu/ctn/RFPdocuments.html>

The RFP solicitation period for RFP #2009-02 closed on July 31, 2009. CTN was gratified that a total of six proposals were submitted. AT&T was selected as the vendor and a public announcement was made on April 13, 2010.

For more specifics related to RFP process and vendor contract negotiations, please refer to previous quarterly reports.

#### Form 466A Filing Status

All components of the first Form 466A filing for the first 50 CTN sites were completed and filed on July 2, 2010. A FCL for the first filing was received on July 22, 2010. Since that time a second Form 466-A was filed for an additional site and for equipment. The CTN has also identified the need for a firewall traversal solution to support real-time telemedicine videoconferencing. CTN is currently making arrangements for vendor presentations to technical and senior management staff. Another Form 466-A filing for this additional equipment is forthcoming.

The CTN is grateful to USAC for their continued time and effort in assisting the CTN with these filings and program guidance.

#### **4. List of Connected Health Care Providers**

On August 17<sup>th</sup>, 2010 the CTN was honored to host United States Chief Technology Officer, Mr. Aneesh Chopra, Sharon Gillett, Chief, Wireline Competition Bureau for the Federal Communications Commission and California Governor Arnold Schwarzenegger for the official launch of the CTN. In this unprecedented event, the CTN demonstrated the capabilities of the CTN as part of the RHCPP program to serve the needs of rural and underserved communities throughout the state. Testimonials of the benefits the CTN will bring to their communities were provided by rural healthcare providers and patients at various locations through out the state.

Although the CTN has not yet connected any health care providers, progress has been made on developing the CTN backbone infrastructure, connection to Internet 2 and completion of the Site Readiness Questionnaires (attached in the last quarterly report) for the first 50 eligible sites. Connectivity orders were placed with AT&T for those sites with executed membership agreements, but for several reasons AT&T and CTN leadership determined that orders would be held in a pending status until internet connectivity is implemented.

With regard to internet connectivity, the CTN explored the various options available and is in active negotiations in order to secure the best pricing available.

#### **5. Identify the Following Non-recurring and Recurring Costs**

CTN has not encumbered any reimbursable expenditures at this time.

#### **6. Describe how Costs have been Apportioned and the Sources of the Funds to Pay Them**

CTN has not encumbered any reimbursable expenditures that are subject to apportionment to multiple funding sources.

### Sources of Funding in Addition to RHCPP Award

The CTN is pleased to report that in September UC Davis Health System and the CTN was awarded a Sustainable Broadband Adoption stimulus grant through NTIA. This grant will not only allow the CTN to hire much needed staff, but also develop a robust training program in conjunction with several program partners. Training will focus on the use of broadband to advance technology-enabled health care for medical practitioners to general consumers. Training will be offered to CTN sites online and on site through a variety of avenues including the UC Davis Extension program, the UC Davis Telemedicine Education Program, in community college curriculum and through the public library system. Fifteen model communities throughout the state will be selected based on specific selection criteria to receive equipment and be used as “super users” for other CTN members.

CTN’s \$3.3 million pledge from the California Emerging Technology Fund, (CETF, a non-profit, state government-chartered company) is currently being held in an account and is specifically designated for funding of the 15% required co-payment for reimbursable expenditures. This represents 100% of the required co-payment funding for the CTN RHCPP. In addition, CTN has been granted partial reimbursement for monthly network connection costs by the California Public Utilities Commission, California Teleconnect Fund (CTF) program. Reimbursement under the CTF program will amount to approximately eight percent of monthly charges. Both the CETF and CTF funds will be used once connectivity orders are placed vendor invoicing commences.

CTN’s \$5 million pledge from United Health Care / Pacificare has provided funds for initial operating expenses. An additional \$1 million of the total \$5 million has been confirmed as match dollars for the CTN through the NTIA Sustainable Broadband Adoption Grant.

Also in the latter part of this quarter, \$1 million of the total \$2 million pledge from the National Consortium for Health Integration was secured as match through the NTIA Sustainable Broadband Adoption grant. The specific use of these match dollars for CTN positions and other operational expenses specific to the NTIA grant is being finalized. A timeline for disbursement of the second million remains under discussion.

### **7. Identify any Technical or Non-technical Requirements or Procedures Necessary for Ineligible Entities to Connect to the Participant’s Network**

CTN discussions continue with various for-profit and other ineligible health care facilities, in an effort to establish guidelines and standards for accommodating their participation. As a result, a draft financial Proforma created to itemize membership costs continues to be modified. Additionally, a share-of-cost membership agreement has been developed and is currently under legal review. Once finalized, the Proforma and Share-of-Cost membership agreement will be shared in the appropriate future Quarterly report.

## **8. Provide an update on the project leadership, management structure and plan**

### **a. Current Leadership and Management Structure**

As of September 7<sup>th</sup>, 2010 the CTN Manager of Operations position is being temporarily filled by a consultant while interviews are being conducted. Over 86 applications were received from candidates in and outside of California. The top five candidates are currently being interviewed. Should a successful candidate be selected it is anticipated that an offer will be extended by the end of the calendar year. This position is responsible for implementation and oversight of all operational aspects of the CTN, working closely and in collaboration with the Executive and Technical Director to achieve a coordinated implementation plan. Thus, finding the right talent for this position is critical.

In September, 2010 the CTN and The California Health Foundation Trust agreed to formalize a collaboration between the California Telemedicine and eHealth Center (CTEC) and the CTN. Through this merger the CTN will leverage existing resources through CTEC. CTEC will continue to operate independently through the term of their HRSA grant funding. Please see <http://www.cteonline.org/> for information on existing programs.

Another significant accomplishment was the selection of a CTN Executive Board for future planning toward the establishment of a 501(c)3 organization. This involved the nomination and confirmation of two co-chairs, a treasurer, secretary and President/CEO by way of the CTN Interim Advisory Board. Board members named are as follows:

#### **Co-Chairs:**

Thomas Nesbitt, MD, MPH  
Associate Vice-Chancellor for Strategic Technology & Alliances  
School of Medicine  
UC Davis Health System

Patrick Soon-Shiong  
Chief Executive Officer  
National Consortium for Health Integration

#### **Treasurer:**

Sunne McPeak  
Executive Director  
California Emerging Technology Fund

#### **Secretary:**

Rachelle Chong,  
Special Counsel, Advanced Information and Communications Technology  
Office of the State Chief Information Officer

#### **President/CEO:**

Eric Brown  
California Telehealth Network



## b. Project Plan and Schedule

Upon receipt of the FCL, CTN initiated the first steps of the implementation phase of the project, beginning with site readiness calls. Calls were completed for the first 50 sites and orders for those with executed membership agreements were placed with AT&T. Once internet connectivity implementation is complete, order processing will commence. The following is an updated approximate schedule of events. Please note that all dates listed are estimates and are subject to change.

### Schedule of Events

<b>Event</b>	<b>Date</b>
Review and Score Proposals	Complete
Completion of Proposal Evaluation Process	Complete
Award Announcement	Complete
Initiation of Vendor Contract Negotiations	Complete
Vendor Contract Signing	Complete
Initial Form 466A Submission	Complete
Completion of Second 466A Submission	Complete
Collect signed Membership Agreements from CTN Participants	Ongoing
Technical Site Readiness Calls for First 50 Sites	Complete
Distribution of Site Readiness Questionnaires to Additional Sites	Ongoing
Legal Review of Share-of-Cost Membership Agreement	11/15/10
Begin Construction of CTN-CENIC Peering Infrastructure	11/25/10
Implementation of Internet Connectivity	01/01/11
Submission of Third 466A Filing	TBD
Submission of second 465 Filing	TBD

## 9. Provide Detail on Whether Network is or Will Become Self-Sustaining

CTN has had discussions with numerous municipal, county government agencies, as well as for-profit healthcare providers, in an effort to develop a self-sustainability model. A revised version of the CTN Sustainability Plan was included as Appendix B in the Quarterly Report dated April 30, 2010. The "Sustainability Forecast Worksheet" (Attachment A of the sustainability plan) was revised to reflect sustainability projections for a ten year period. The plan provides a comprehensive articulation of various strategies that CTN will employ to develop financial sustainability. These include: 1) Member subscription fees; 2) Access fees from commercial interests; 3) federal/state subsidy programs; 4) donations from non-profit healthcare funding organizations; 5) access and subscription fees from non-healthcare entities for use of network connectivity. Please refer to the April 30, 2010 Quarterly Report for more details on the Sustainability Plan.

In response to increased Share-of-Cost membership inquiries, a new membership agreement for potential fair-share members is under legal review. Also, due to increasing member requests for higher bandwidth, the CTN Membership Agreement was updated (see Attachment 1 of this quarterly report). Rates are now included for 1.5 Mbps, 6.0 Mbps, 10.0 Mbps, and 45.0 Mbps.

## **10. Provide Detail on How the Supported Network has Advanced Telemedicine Benefits**

No benefits directly attributable to the CTN have yet been derived, however, through the CTN's collaboration with CTEC and through the NTIA Sustainable Broadband Adoption grant, telemedicine related training will be available to CTN members in preparation for use of such services over the network.

## **11. Provide Detail on How the Supported Network has Complied with HHS Health IT Initiatives**

- a. Interoperability Standards: the network has been designed as an "open network", complying with industry-standard protocols.
- b. The network has not deployed any applications to date. CTN intends to adhere to the Certification Commission for Healthcare Information Technology (CCHIT) standards in selecting and implementing applications.
- c. The CTN will interconnect with Internet 2 and National LambdaRail national networks. This will permit CTN to interoperate with all current and planned National Health Information Network (NHIN) activities and initiatives.
- d. To date, the network has not yet used resources from the Agency for Healthcare Research and Quality (AHRQ) National Resource Center for Health Information Technology.
- e. University of California Davis Health System (UCDHS), the operational lead organization for the CTN, is actively involved in bioterrorism and pandemic response activities. Several members of the UCDHS Center for Health and Technology (CHT) are actively involved in this work and will be advised to coordinate the CTN-related activities with Department of Health and Human Services (HHS) Secretary for Public Response.
- f. UCDHS CHT will participate with CTN management to facilitate interoperability with public health and emergency organizations. CHT completed work through a \$5 million grant from HHS to develop Emergency Department Surge Capacity coordination. Part of this work involved developing collaborative and cooperative agreements among local, county and regional emergency response agencies and public health organizations. Efforts were made to coordinate the integration of additional sites for the HHS project in such a fashion that there was maximal overlap between HHS and CTN sites. The long-term goal is to position the CTN to become a core component of region and statewide efforts to develop emergency response and disaster preparedness programs and infrastructure. CHT and CTN management will expand the coordination efforts to include HHS and CDC interoperability requirements, as the network is actively deployed.
- g. CTN is coordinating with the University of California Proposition 1D/PRIME rural outreach initiatives. This program is funded through a \$200 million bond initiative approved by the voters to enhance training of medical students who express interest in practicing in rural areas. A portion of the funds (\$10 million) will be used to provide telemedicine equipment to rural health care sites, in order to facilitate telemedicine use. Due to significant budgetary challenges, the equipment distribution initiative was suspended for a period of time during late 2009. The state recently released additional funding for the 1D/PRIME initiative and equipment orders have been placed. Deployment to rural sites is anticipated to begin this quarter. CTN and UC are coordinating the two projects, with the goal of selecting common sites for both programs.

## **12. Explain How the Selected Participants Coordinated in the Use of Their Health Care Networks**

CTN will implement ongoing efforts to comply with HHS programs to provide access to network services during national, regional or local public health emergencies. CTN has initial plans to facilitate access through three means:

1. UCDHS received a \$5 million grant from HHS as part of their Emergency Department Surge program to develop effective health care coordination capabilities in the event of public health emergencies. UCDHS selected rural health care facilities that will co-participate in both programs. In this fashion, the capabilities of CTN to support coordination of geographically distributed health care resources on a regional basis will be developed.
2. CTN will connect to both National Lambda Rail and to Internet 2 national networks. Through these connections, HHS will have unrestricted access to the CTN network, thereby providing integration at a national level.
3. CTN will connect to the National Lambda Rail Regional Optical Network (RON) provider for California, the Corporation for Education Network Initiatives in California (CENIC). CENIC provides direct connectivity to every University of California campus and medical center, as well as most major academic medical centers within the state (e.g., Stanford Medical Center and University of Southern California Medical Center). This connectivity will provide a means of broadly coordinating access to every major academic medical network within the state.

In addition, discussions continue on how the CTN might coordinate efforts with other RHCPP networks to develop benefits for participants across state boundaries. The CTN Leadership Team communicates regularly with the Oregon Health Network, the Colorado Telehealth Network and the Southwest Telehealth Access Grid in New Mexico to identify opportunities to partner.

## Appendix A – CTN Consortium Member Organizations

### Health Care Providers:

- The University of California System (UC)
- The UC Office of the President (*Managing Partner*)
- The UC Davis Health System (*Project Management Lead*)
- Rural health networks and coalitions
- The Health Alliance of Northern California (HANC) formerly Northern Sierra
- The Community Clinics Health Network (CCHN)
- Central Valley Health Network (CVHN)
- The Southern Sierra Telehealth Network (SSTN)
- Open Door Health Network/Open Door Community Health Center (ODCHC)
- The Indian Health Service (IHS) network

### Governmental Partners:

- The Office of the Governor
- California Health & Human Services Agency (CHHSA)
- The Office of Statewide Health Planning and Development (OSHPD)
- California Business, Transportation and Housing Agency (BTH)
- The California Department of Managed Health Care (DMHC)
- The California Office of Emergency Services (OES)
- The California Public Utilities Commission (CPUC)
- The California Emerging Technology Fund (CETF)
- The California Institute for Telecommunications and Information Technology (Cal IT2)

### Other Organizations:

- The California Hospital Association (CHA)
- The California Health Foundation and Trust (CHFT)
- The California Telemedicine & eHealth Center (CTEC)
- The California State Rural Health Association (CSRHA)
- The California Primary Care Association (CPCA)

**ATTACHMENT 1**  
**REVISED CTN MEMBERSHIP AGREEMENT**

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## **California Telehealth Network Membership Agreement**

This California Telehealth Network Membership Agreement (“Agreement”) is entered into by and between The Regents of the University of California (on behalf of the CTN-LA (as defined below)) and INSERT SITE NAME HERE (“Member”).

The California Telehealth Network (“CTN”) is a statewide dedicated health care broadband network developed to ensure that California communities, especially rural communities, have access to a wide range of telemedicine and eHealth activities. The CTN was established as a result of Federal Communication Commission (“FCC”) funds, as well as a number of other public and private funding sources identified in Exhibit A. Universal Service Administrative Company (“USAC”) (USAC-<http://www.usac.org/default.aspx>) is the organization appointed by the FCC to be responsible for overseeing, administering and managing the Rural Health Care Pilot Program (“RHCPP” or “Program”) (RHCPP-<http://www.fcc.gov/cgb/rural/rhcp.html>) in accordance with FCC requirements. CTN is one of many networks authorized for funding under the RHCPP. The CTN will provide the connectivity necessary to access high quality, collaborative health services, continuing education, research and peer networking.

The University of California Office of the President and UC Davis currently serves as the Lead Agency for the CTN (“CTN-LA”). The CTN-LA manages the selection of the telecommunication vendor, the implementation of the network, and the development of a sustainability model.

Member is committed to improving access to and the quality of healthcare in its community.

In consideration of the foregoing, the parties agree as follows:

### **I. RESPONSIBILITIES OF THE CALIFORNIA TELEHEALTH NETWORK LEAD AGENCY**

- 1) Oversee the implementation of the CTN.
- 2) Select a telecommunications broadband vendor that meets requirements of the Program and the CTN-LA.
- 3) Maintain the CTN as defined in the FCC RHCPP guidelines (see RHCPP-<http://www.fcc.gov/cgb/rural/rhcp.html>).

- 4) Guarantee a minimum bandwidth and Quality of Service (“QOS”) capabilities to provide high quality support for commonly used telehealth and eHealth applications (e.g. videoconferencing, HIE) (minimum baseline circuit capacity is defined at the T1 level).
- 5) Develop and update an implementation schedule of sites.
- 6) Maintain a CTN Membership Manual as developed with input from participants and the CTN Advisory Group.
- 7) Submit documentation to the FCC including Quarterly Reports and Sustainability Plan.
- 8) Maintain a web site to facilitate the management of the CTN and to support communication with member sites.
- 9) Retain records as required by the Program.
- 10) Maintain the Membership Fee schedule for “Share-of-Cost”, ”Pilot Program” and “Subsidy” participants. A description of each type is located in the Membership Agreement Guide, Exhibit B – Membership Fees and Terms section.
- 11) Provide a minimum of sixty (60) days notice regarding changes in the fee schedule, and provide a formal mechanism for membership comment during the notice period that is moderated by the CTN Advisory Board to ensure transparency in establishing fees necessary to sustain the CTN.
- 12) If transferring any of the CTN-LA’s responsibilities to a third party, assure that the third party is approved by USAC/FCC.
- 13) CTN-LA shall notify Member within fourteen (14) days of any change in management, funding change or other operational circumstances that may impact the operation of the CTN.
- 14) CTN-LA shall defend, indemnify and hold Member harmless from and against any and all liability, loss, expense (including reasonable attorneys’ fees), or claims for injury or damages arising out of the performance of this Agreement but only in proportion to and to the extent such liability, loss, expense, attorneys’ fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of CTN-LA.

## **II. RESPONSIBILITIES OF CTN MEMBER**

- 1) Comply with all terms, conditions and requirements outlined in this Agreement and the Membership Agreement Guide (Exhibit B) and any requirements dictated by the Program (see <http://www.fcc.gov/cgb/rural/rhcp.html>).

- 2) Comply with policies and directives issued by CTN-LA from time to time as it deems necessary for CTN-LA to comply with its contract with the telecommunications vendor, or that CTN-LA otherwise deems reasonable under the circumstances, provided that such policies and directives have been communicated to Member and do not conflict with the terms of this Agreement.
- 3) Provide data reports as required by the FCC, currently on a quarterly basis, to CTN-LA. An example of the data required and other details for the quarterly reports are included in Exhibit B – Program Reporting section.
- 4) Install and maintain all inside wiring and on-site equipment necessary to complete connection to the CTN including, but not limited to, that outlined in Exhibit B – Wiring and Onsite Equipment Requirements section.
- 5) Maintain a designated technical contact at each Member facility to work with CTN-LA.
- 6) Submit timely payment of Membership Fees as defined in Exhibit B – Membership Fees and Terms section and the CTN Membership Fee Schedule, Exhibit C.
- 7) Accept email communications from CTN-LA as one mode of communication from CTN-LA, including any notice provided by CTN-LA under this Agreement. Member agrees to provide and maintain an email address for the purpose of receiving communications from CTN-LA, notifying CTN-LA of any change in email address not less than ten (10) days prior to the change.
- 8) Maintain all licenses, permits, certificates and credentials required by the laws of the United States, the State of California, and all other appropriate governmental agencies necessary for the Member and each Member site to maintain eligibility for the RHCPP.
- 9) Maintain comprehensive professional liability and general liability insurance.
- 10) Ensure that the location at which the telecommunications vendor installs, maintains or provides services to Member is a suitable and safe working environment, free of Hazardous Materials. “Hazardous Materials” means any substance or material capable of posing an unreasonable risk to health, safety or property or whose use, transport, storage, handling, disposal, or release is regulated by any law related to pollution of air, water, or soil, or health and safety. The telecommunications vendor does not handle, remove or dispose of Hazardous Materials, and has no obligation to perform work at a location that is not a suitable and safe working environment, and will not be liable for any Hazardous Materials. If the telecommunications vendor encounters any Hazardous Materials at the site where the vendor is to install, maintain or provide services, the telecommunications vendor may terminate the affected service or service component, or suspend performance until the Member/site removes and remediates Hazardous Materials at the Member’s expense in accordance with applicable law.



- 11) Assume full responsibility for compliance with the FCC and USAC Rural Health Care Pilot Program's health care services eligibility requirements (see <http://www.fcc.gov/cgb/rural/rhcp.html>).
- 12) Notify CTN-LA within fourteen (14) days of any organizational change that might alter Member's FCC or USAC Program's health care services eligibility status.
- 13) Acknowledge that the authoritative source for designation of eligibility services shall be the FCC and USAC.
- 14) Member will indemnify CTN-LA and/or the telecommunications vendor and their respective Affiliates, employees, subcontractors, and agents against all damages for bodily injury (including death) and damages to real and tangible property to the extent that such loss was proximately caused by any person for whose conduct the indemnitor is responsible and which arises from the performance or receipt of services hereunder. Member agrees at its expense to defend or settle any third-party claim against CTN-LA and/or the telecommunications vendor and their respective Affiliates, employees, directors, subcontractors, and suppliers, and to pay all compensatory damages that a court may finally award against such parties to the extent the claim: (a) arises out of the Member's, its Affiliate's, or any authorized user's access to, or use of, the services and the claim is not directly attributable to the negligent acts or omissions and/or willful misconduct of the CTN-LA and/or the telecommunications vendor arising from the performance of services hereunder; (b) alleges that a service infringes any patent, trademark, copyright or trade secret, and is based on (i) Member's, its Affiliate's or an authorized user's content, (ii) modifications to the service by the Member, its Affiliates or third parties, or combinations of the service with any services or products not provided by CTN-LA and/or the telecommunications vendor, (iii) CTN-LA's and/or the telecommunications vendor's adherence to Member's, its Affiliate's or an authorized user's written instructions, or (iv) use of the services in violation of this agreement; or (c) alleges a breach by Member, its Affiliates, or authorized user's of a software license agreement covering software provided in connection with services provided hereunder.
- 15) Member agrees to CTN connectivity at 1.5 Mbps. Sites indicating interest of higher connectivity speeds will be explored as outlined in Exhibit C. If determined permissible by the CTN-LA, an amendment to the Membership Agreement will be required to confirm new connectivity speed and a corresponding fee schedule.
- 16) Member acknowledges that continued operation of the CTN may be subject to the availability of continued support from funding sources and that the CTN-LA reserves the right to modify or curtail the CTN services in total or in part at any time, at its sole discretion.

### **III. GENERAL PROVISIONS**

**1. Service Activation.** Activation of service is dependent upon completion of all of the following:

- a) Execution of this Agreement
- b) CTN-LA's notification from the awarded telecommunication vendor that broadband through the CTN is accessible to Member site.

**2. Membership Fees and Terms.** Members are subject to either a pilot program/subsidy or share-of-cost fee schedule as determined by the Program's site eligibility criteria. Member's corresponding fee schedule is outlined in Exhibit C. All other payment terms required are outlined in Exhibit B – Membership Fees and Terms section.

**3. Term and Termination.** The initial term of Agreement is three (3) years from the effective date, and thereafter shall renew for successive one year terms, unless terminated by either party as specified below or as otherwise expressly provided in this Agreement:

- a) Either party may terminate this Agreement without cause upon thirty (30) days notice.
- b) Either party may terminate this Agreement upon ten (10) days prior written notice to the other party for "Cause" (as defined below) or upon the occurrence of any of the following events:
  - i. the other party becomes insolvent (for purposes of this Agreement, "insolvent" shall mean that the party is generally not paying its debts as such debts become due unless such debts are the subject of a bona fide dispute);
  - ii. a receiver is appointed for the assets of the other party;
  - iii. an assignment is made by the other party for the benefit of its creditors;
  - iv. any relief is taken or suffered by the other party as debtor under any bankruptcy or insolvency act and such proceeding has not been dismissed in sixty (60) days.
  - v. "Cause" is defined as not meeting the requirements of this Agreement, including a failure to comply with the CTN Membership Agreement Guide requirements outlined in Exhibit B.
- c) Immediate termination may be initiated for compliance issues that substantially jeopardize the grant funding agreements with the FCC or other sponsors.
- d) CTN-LA shall have the right to immediately terminate this Agreement upon notice to Member in the event that Member, or any person with an ownership interest or in a management position with Member, is excluded from participation in federal or state health care programs, debarred from receipt of federal or state funds, or convicted of a crime related to the above.

**4. Limitation of Liability.** CTN-LA shall have no liability for consequential, exemplary, indirect, special, incidental or punitive damages, including loss of profits, revenues, data or use, incurred by Member or any third party acting on behalf of Member, whether based on contract, tort or any other legal theory, arising out of the vendor

selection, or installation, operation, maintenance, failure to maintain, use, misuse, or malfunction of the CTN.

**CTN-LA does not make and expressly disclaims all warranties with respect to the broadband communications link, whether express, implied or statutory, including without limitation the implied warranties of merchantability and fitness for a particular purpose.**

- 5. Change in Legal Status:** In the event that eligibility for the FCC Program changes, Member understands that this Agreement may be terminated by CTN-LA if the change would result in noncompliance with FCC or USAC rules or the terms of the FCC funding. Alternatively, if the Agreement is permitted to continue, Member agrees to assume full responsibility for any financial obligation or other restitution that may be required under the applicable terms and conditions of the CTN or its funding sources in accordance with the then-current CTN Membership Fee Schedule.
- 6. Delegation/Assignment:** Member shall not delegate duties or assign any rights under this Agreement without the prior written consent of CTN-LA. Any attempted assignment or delegation of a CTN-LA Member's rights, claims, privileges, duties or obligations hereunder shall be null and void. Member agrees to execute one or more Letters of Agency to continue delegation of authority as established through Member's original Letter of Agency for CTN-LA to act on Member's behalf before the FCC and USAC in matters related to the Program.
- 7. Exhibits.** All Exhibits referenced below are incorporated by reference into this Agreement. If anything this Agreement conflicts with an Exhibit, the terms of the Agreement control.
- 8. Use of Name.** Member shall not use CTN-LA's or the University of California's name in any advertising or promotional materials or statements to the public without the prior written approval of CTN-LA.
- 9. Governing Law/Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of California applicable to agreements made and to be performed wholly within that state. Venue shall be exclusively in the judicial district encompassing Sacramento, California.
- 10. Partial Invalidity.** If any provision of this Agreement is found to be invalid or unenforceable by any court or other lawful forum, such provision shall be ineffective only to the extent that it is in contravention of applicable laws without invalidating the remaining provisions of this Agreement, unless such invalidity or unenforceability would defeat an essential business purpose of this Agreement.
- 11. Independent Relationship.** Nothing in this Agreement is intended to create nor shall it be deemed or construed to create any relationship between the parties hereto other than that of independent entities contracting with each other hereunder solely for the

purpose of affecting the provisions of this Agreement. Neither of the parties hereto, nor any of their respective officers, directors or employees shall, solely by virtue of this Agreement, be construed to be the agent, employee or representative of the other.

- 12. Expenses.** Should either party institute any action or proceeding to enforce this Agreement or any provision hereof or for damages by reason of any alleged breach of this Agreement or of any provision hereof, or for a declaration of rights hereunder, the substantially prevailing party in any such action or proceeding shall be entitled to receive from the other party all costs and expenses, including reasonable attorneys' fees, incurred by the substantially prevailing party in connection with such action or proceeding. The determination of which party is the "substantially prevailing party," shall be made by the court or arbitrator, as applicable.
- 13. Force Majeure.** Neither party hereto shall be liable for any delay or failure in the performance of any obligation under the Agreement or for any loss or damage (including indirect or consequential damage) to the extent that such nonperformance, delay, loss or damage results from any contingency which is beyond the control of such party, provided such contingency is not caused by the fault or negligence of such party. A contingency for the purposes of this agreement shall be third-party communication network outages, Acts of God, fire, explosions, storms, wars, hostilities, blockades, public disorders, quarantine restrictions, embargoes, strikes or other labor disturbances, and compliance with any law, order or control of, or insistence by any governmental or military authority. The party claiming to be affected by such contingency shall give immediate notice to the other party, giving full particulars thereof. The existence of such contingencies shall justify the suspension of performance hereunder by either party; provided, however, that if such period of delay shall exceed sixty (60) days from the date of such notice, either party shall have the right to terminate this Agreement.
- 14. Third Party Beneficiaries.** Nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any persons other than the parties to it and the respective permitted successors and assigns, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third persons to any party to this Agreement, nor shall any provision give any third persons any right of subrogation or action over or against any party to this Agreement.
- 15. Notices.** Except as otherwise expressly provided herein, all notices which are required or permitted to be given pursuant to this Agreement shall be in writing and shall be sufficient in all respects if delivered personally, by electronic facsimile, by express courier (such as Federal Express) or by certified mail, return receipt requested, postage prepaid, addressed to a party as indicated below:

For CTN-LA:	For Member: (Please Insert Contact Information)
University of California Davis Health System	
C/O Center for Health and Technology	
2315 Stockton Boulevard	
Sherman Building, Suite 3900	
Sacramento, CA 95817	

Notice shall be deemed to have been given upon transmittal thereof as to communications which are personally delivered or transmitted by electronic facsimile and, as to communications made by United States mail, on the third day after mailing (so long as the mailing was made in a metropolitan area in the State of California). The above addresses may be changed by giving notice of such change in the manner provided above for giving notice.

**16. Continuing Cooperation.** Throughout the term of this Agreement, the parties shall cooperate in good faith and agree to perform any and all tasks which are reasonably necessary for the performance of this Agreement.

**17. Authorized Representatives.** Each of the persons signing below represents and warrants to the other party that he/she is duly authorized to sign this Agreement and that upon his/her execution of this Agreement, this Agreement is a binding obligation of the party on whose behalf the person executes this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first written below.

INSERT SITE NAME HERE

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

REGENTS FOR THE UNIVERSITY OF CALIFORNIA ON BEHALF OF THE CTN-LA.

By \_\_\_\_\_

Date: \_\_\_\_\_

If you are interested in a connectivity speed above the standard 1.5 Mbps, please check the appropriate box below:

☐ 6.0 Mbps (CTN VPN Managed Landline Service (medium speed))\*

☐ 10.0 Mbps (CTN VPN Managed Landline Service (high speed))\*

☐ 45.0 Mbps (CTN VPN Managed Landline Service (high capacity/multi-site))\*



## **EXHIBIT A**

### **CTN Public and Private Funding Sources**

CTN Public and Private Funding Sources to date include the following. These entities may be subject to change at any time.

- FCC Rural Health Care Pilot Program (RHPP)- <http://www.fcc.gov/cgb/rural/rhcp.html>
- California Emerging Technology Fund (CETF) - <http://cetfund.org/>
- United Health/Pacificare
- National Coalition for Health Integration
- California Teleconnect Fund (California Public Utilities Commission)
- University of California



## **EXHIBIT B**

### **Membership Agreement Guide**

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The California Telehealth Network (“CTN”) is a statewide project initiated to provide broadband connectivity for telehealth, especially in rural areas. A working group of major California institutions and stakeholders is united with the common goal of creating a forward-looking, state-of-the-art telehealth network for California. This group includes California leaders and representatives of multiple offices and organizations, including the Office of Governor Arnold Schwarzenegger, several major state governmental entities responsible for health, business and telecommunications matters, the University of California (Office of the President and UC Davis Health System), non-profit organizations, and California public and non-profit health care providers, including existing regional health networks.

The CTN is intended to improve access in rural and underserved areas to high quality, collaborative health services and provider education. The network will be capable of linking California’s rural health facilities to academic centers of excellence and to other non-profit and for-profit health providers. The CTN will also serve as a resource for emergency services and disaster recovery training and efforts.

The purpose of this CTN Membership Agreement Guide is to further define requirements referenced in the CTN Membership Agreement.

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- **Program Reporting**

CTN Members are required by FCC to submit electronic program reports (currently quarterly) using a pre-determined Microsoft Excel format. Report templates will be available to Members via the CTN Web site. Reports are to be sent to the address noted on the Web site no later than fourteen (14) days after the close of each calendar quarter.

Member site data reporting requirements will be refined based on FCC and other sponsorship guidelines. CTN Members will be notified by CTN-LA of reporting requirements sixty (60) days in advance and will receive a thirty (30) day comment period.

Reporting elements may include:

- Site demographic and contact information
- Type of CTN services accessed
- Frequency of CTN services accessed (“frequency” to be defined)
- Increase in site services as a result of CTN access



- Increase in staff knowledge areas as a result of services accessed through CTN
- Additional service suggestions for CTN consideration
- **Wiring and Onsite Equipment Requirements**  
 The support for the network infrastructure is defined-limited to a specific end-point. All wiring beyond the end-point is the responsibility of the individual Members. The CTN Member will be responsible for authorizing, scheduling and funding any physical or environmental upgrades, repairs or modifications that are necessary in order to properly install and maintain the communications equipment and/or circuits for connection to the CTN. These may include:
  - Upgrade or repair of the room, closet, etc., where communications equipment will be installed in order to provide adequate space, physical support and security.
  - Installation or upgrade of conduit, raceway, etc. that provides connectivity between Site exterior and the interior location where communications equipment and circuit terminations will be installed.
  - Installation, repair or enhancement of ventilation and electrical supply (HVAC) serving the communications location.

- **Membership**

CTN Membership and other fees are defined by type of service in the CTN Membership Fee Schedule, Exhibit C. Separate fee schedules exist for Share-of-Cost Members and Pilot Program/Subsidy Members. A description of each follows:

*Pilot Program or Subsidy Member*

A Pilot Program or Subsidy Member refers to sites that are eligible for FCC program support. Pilot Program and Subsidy Members must be public or not-for-profit health care providers and qualified by USAC based on the requirements set forth by the FCC (see RHCPP-<http://www.fcc.gov/cgb/rural/rhcp.html>).

*Share-of-Cost Member*

A Share-of-Cost member refers to organizations not eligible for the FCC Pilot Program funding. These organizations are non-USAC-eligible health care providers or for-profit organizations.

- **Fees and Terms**

CTN-LA will charge Member a monthly subscription fee, payable in advance, due on the first of each month of service. CTN-LA will invoice Member for the initial monthly subscription fee and other applicable set up fees at least thirty (30) days prior to the activation date or from the date initial charges commence for Pilot Program and future subsidy members.

CTN-LA will issue subsequent invoices on a monthly basis at least thirty (30) days in advance. Member shall be required to continue monthly subscription fee payments at the

current applicable monthly rate as specified in the Member's respective fee schedule. All current applicable subscription rates will be posted on the CTN Web site.

CTN-LA may change the monthly subscription fee as the CTN sustainability model is refined. If changes occur, CTN-LA will notify Members sixty (60) days in advance in writing and via the CTN Web site. Should a change in fee schedule occur, members will be provided a formal comment period during the sixty (60) days via the CTN Web site, moderated by the CTN Advisory Board, to ensure transparency in establishing fees necessary to sustain the CTN.

A late charge of the greater of \$5 or 1.5% per month, will apply to payments received ten (10) days after date of invoice and monthly thereafter for unpaid balances. Payments not received within sixty (60) days after date of invoice will result in termination of the connection and termination of the Membership Agreement.

Members hereby agree to pay additional charges and fees for any miscellaneous equipment, software or services not otherwise covered under the Program and for which prior written authorization has been obtained from Member by CTN-LA. Additionally, Members may be charged early termination fees, move fees, cancellation fees, turn-away charges and other special service charges as outlined in Exhibit D - Additional Member Charges. Payment shall be due and payable upon receipt of invoice from CTN-LA.

In the event that a Member continues to use equipment, software, or services provided under the Program following the date of termination of participation, the Member agrees to pay the current "fair share" cost for these services. Fees shall be levied on a monthly basis and will not be prorated for partial month usage. Fees shall be determined solely by the CTN-LA and shall be equivalent to the currently applicable fees charged to Share-of-Cost Members under the Program.



**EXHIBIT C**  
**CTN Membership Fee Schedule**  
**As of October 1, 2010**  
**Pilot Program/ Subsidy Members**

Pilot Program Membership Fees:

Pilot Program Member will be invoiced on a monthly basis according to fee schedule below applying all terms as outlined in Exhibit B – Member Fees and Terms section.

<b>Type of Service</b>	<b>Connectivity</b>	<b>Month 1 through 12</b>	<b>Other Fees</b>
CTN VPN Managed Landline Service (standard)	1.5 Mbps	\$62.50 per month	NA
CTN VPN Managed Landline Service (medium speed)*	6.0 Mbps	\$125.00 per month	NA
CTN VPN Managed Landline Service (high speed)*	10.0 Mbps	\$262.50 per month	NA
CTN VPN Managed Landline Service (high capacity/multi-site)*	45.0 Mbps	\$1,000.00 per month	NA

<b>Type of Service</b>	<b>Connectivity</b>	<b>Month 13 through 36</b>	<b>Other Fees</b>
CTN VPN Managed Landline Service (standard)	1.5 Mbps	\$100.00 per month	NA
CTN VPN Managed Landline Service (medium speed)*	6.0 Mbps	\$240.00 per month	NA
CTN VPN Managed Landline Service (high speed)*	10.0 Mbps	\$420.00 per month	NA
CTN VPN Managed Landline Service (high capacity/multi-site)*	45.0 Mbps	\$2,000.00 per month	NA

*\* subject to verification of bandwidth availability in your region at this speed and funding available through the Rural Health Care Pilot Program.*

**NOTE:** The additional speeds may be available in your region and will be assessed on a case by case basis. If you are interested in a higher connectivity speed, please check the box on the last page of your agreement after signing and the CTN will contact you upon determination if the alternate speed is available.

The high speed circuit services (6.0 Mbps and higher) may not be available at every site for a variety of reasons, primarily due to the current limited availability of telecommunications

infrastructure in certain locations. CTN-LA will be working with the CTN Prime Contractor as well as with participating local telecommunications providers to enhance the availability of high speed circuits as the project progresses. In the interim, approval of all requests for high speed service are subject to verification that the requested circuit service is technically supported and available at a pricing level consistent with existing CTN contract pricing agreements.

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## EXHIBIT D Additional Member Charges

### ***Circuit Moves***

CTN will provide the initial installation of circuit and all supporting equipment at no charge to Members. Any subsequent changes to the initial installation that are required to accommodate moves, remodels, and other ineligible activities may result in additional charges by the CTN Prime Contractor. Such charges will be the responsibility of the Member. These charges include the following:

1. Router Move – the CTN circuit that serves a Member’s facility is terminated on a communication device called a “router.” The router is installed in the Member’s facility. If it is necessary to move the circuit and router (either within the same facility, or to a new facility at another location), the following charges will apply.
2. Second Router Move – if a Member elects to move the circuit and router installation location two or more times within the same calendar year, additional charges apply.
3. Router Site Delete – if a connection to the CTN is terminated by a Member prior to the full term of the agreement, an additional charge will be due for decommissioning and removal of the router by the CTN Prime Contractor as follows:

<b>Circuit Moves</b>	<b>Member Charges</b>
Router Move – 1 <sup>st</sup> request	\$964.00
Router Move – 2 <sup>nd</sup> request per year charge	Maximum prorated additional charge \$964.00
Router Decommissioning and Delete	\$788.00

### ***Early Termination***

If the Member terminates this Agreement prior to the expiration of the twenty-fourth (24th) month of the Agreement, the Member shall reimburse CTN-LA a proportionate amount of the fee set forth below, which shall be computed as follows: Fee times a fraction, the numerator of which shall be the number of whole months that have elapsed since the effective date of the Agreement and the denominator of which is twenty-four (24).

<b>Early Termination Charges</b>	<b>1.5 Megabits per second service</b>	<b>10 Megabits per second service</b>
Term in month 1 of initial 24	\$3,604.00	\$12,244.00

initial month period		
Term in month 2 of initial 24 initial month period	\$3,453.83	\$11,733.83
Term in month 3 of initial 24 initial month period	\$3,303.67	\$11,223.67
Term in month 4 of initial 24 initial month period	\$3,153.50	\$10,713.50
Term in month 5 of initial 24 initial month period	\$3,003.33	\$10,203.33
Term in month 6 of initial 24 initial month period	\$2,853.17	\$9,693.17
Term in month 7 of initial 24 initial month period	\$2,703.00	\$9,183.00
Term in month 8 of initial 24 initial month period	\$2,552.83	\$8,672.83
Term in month 9 of initial 24 initial month period	\$2,402.67	\$8,162.67
Term in month 10 of initial 24 initial month period	\$2,252.50	\$7,652.50
Term in month 11 of initial 24 initial month period	\$2,102.33	\$7,142.33
Term in month 12 of initial 24 initial month period	\$1,952.17	\$6,632.17
Term in month 13 of initial 24 initial month period	\$1,802.00	\$6,122.00
Term in month 14 of initial 24 initial month period	\$1,651.83	\$5,611.83
Term in month 15 of initial 24 initial month period	\$1,501.67	\$5,101.67
Term in month 16 of initial 24 initial month period	\$1,351.50	\$4,591.50
Term in month 17 of initial 24 initial month period	\$1,201.33	\$4,081.33
Term in month 18 of initial 24 initial month period	\$1,051.17	\$3,571.17
Term in month 19 of initial 24 initial month period	\$901.00	\$3,061.00
Term in month 20 of initial 24 initial month period	\$750.83	\$2,550.83
Term in month 21 of initial 24 initial month period	\$600.67	\$2,040.67
Term in month 22 of initial 24 initial month period	\$450.50	\$1,530.50
Term in month 23 of initial 24 initial month period	\$300.33	\$1,020.33
Term in month 24 of initial 24 initial month period	\$150.17	\$510.17

### ***Special Services***

CTN will provide to Members at no additional charge, standard Services associated with installation and maintenance of the CTN network connection. Certain “Special Services” are available at additional charge. Such charges will be the responsibility of the Member. These are as follows:

1. Professional Services – if a Member wishes to have custom programming performed on their network connection to CTN, such changes must be approved in advance by CTN to ensure that the proposed changes will not negatively affect other CTN Members or jeopardize performance of the network as a whole. If such changes are approved, a Member may elect to have the CTN Prime Contractor perform the requested changes at Member’s expense. Custom programming is charged at the following hourly rates:

<b>Special Services</b>	<b>Member Charges</b>
Custom Network/Router Programming	\$242.00 per hour
Router Configuration Change	\$305.00 per hour

### ***Cancellation and Turn-Away Charges***

CTN will work closely with Members to ensure that their site is adequately prepared for installation of the circuit and associated communications equipment. In the event that a scheduled installation is cancelled or is aborted for any of the following reasons, additional charges will be the responsibility of the Member.

1. Short Cancellation – Member cancels an installation without adequate notice
2. Member refuses installation after the Prime Contractor staff is onsite
3. Prime Contractor staff aborts installation due to hazardous materials
4. Prime Contractor staff aborts installation due to inadequate environmental conditions in the installation site
5. Prime Contractor staff aborts installation due to inadequate access to the installation site due to situations such as the presence of clutter, stored materials, or other access issues.

<b>Cancellation and Turn-Away Charges</b>	<b>Member Charges</b>
1. Short Cancellation	\$368.00
2. Member Refusal of Installation	\$368.00
3. Hazardous Material Issue	\$368.00
4. Inadequate Environmental Conditions	\$368.00
5. Inadequate Access	\$368.00